

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	X	
	:	
TODD C. BANK,	:	
	:	
Plaintiff,	:	ORDER ADOPTING REPORT
	:	AND RECOMMENDATION
– against –	:	
	:	23-CV-2467 (AMD) (JAM)
DIMENSION SERVICE CORPORATION,	:	
	:	
Defendant.	:	
-----	X	

ANN M. DONNELLY, United States District Judge:

On March 30, 2023, the plaintiff brought this action on his own behalf and purportedly on the behalf of others similarly situated, alleging that the defendant violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, by making unsolicited telemarketing calls to the plaintiff and others “using an[] automatic telephone dialing system or an artificial or prerecorded voice.” (ECF No. 1 ¶¶ 1, 10, 23, 29, 35.)

Following the close of discovery, on December 26, 2023, the defendant filed a second amended answer to the complaint, which included 24 affirmative defenses to the plaintiff’s allegations. (ECF No. 25.) On the same day, the plaintiff moved to strike the defendant’s Fifth, Eleventh, Thirteenth, Fourteenth, and Sixteenth Affirmative Defenses. (ECF No. 26.) On December 27, 2023, the Court referred the motion to Magistrate Judge Joseph A. Marutollo. (*ECF Order dated Dec. 27, 2023.*)

In a December 29, 2023 Report and Recommendation, Judge Marutollo recommended that the plaintiff’s motion be granted as to the Fifth, Thirteenth, and Fourteenth Affirmative Defenses and denied as to the Eleventh and Sixteenth Affirmative Defenses. (ECF No. 31.) No

objections have been filed to the Report and Recommendation, and the time for doing so has passed.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). To accept those portions of the report and recommendation to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Jarvis v. N. Am. Globex Fund L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quotation marks omitted).

I have carefully reviewed Judge Marutollo’s thorough and well-reasoned Report and Recommendation and find no error. Accordingly, I adopt the Report and Recommendation in its entirety and order that the plaintiff’s motion to strike the Fifth, Thirteenth, and Fourteenth Affirmative Defenses be granted and his motion to strike the Eleventh and Sixteenth Affirmative Defenses be denied.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
January 16, 2024